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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

DAREN HEATHERLY, an individual; and )  
 DISABILITY RIGHTS, ENFORCEMENT, )  
 EDUCATION, SERVICES: HELPING YOU )  
 HELP OTHERS, a California public benefit )  
 corporation, )

Plaintiffs, )

v. )

WASHOE HOUSE, INC., a California )  
 corporation, )

Defendant. )

CIVIL NO. 08-0736

**COMPLAINT FOR INJUNCTIVE RELIEF  
 AND DAMAGES:**

**1<sup>st</sup> CAUSE OF ACTION:** For Denial of Access  
 by a Public Accommodation in Violation of the  
 Americans with Disabilities Act of 1990 (42  
 U.S.C. §12101, *et seq.*)

**2<sup>nd</sup> CAUSE OF ACTION:** For Denial of Full  
 and Equal Access in Violation of California  
 Civil Code §§54, 54.1 and 54.3

**3<sup>rd</sup> CAUSE OF ACTION:** For Denial of  
 Accessible Sanitary Facilities in Violation of  
 California Health & Safety Code §19955, *et seq.*

**4<sup>th</sup> CAUSE OF ACTION:** For Denial of  
 Access to Full and Equal Accommodations,  
 Advantages, Facilities, Privileges and/or  
 Services in Violation of California Civil Code  
 §51, *et seq.* (The Unruh Civil Rights Act)

**DEMAND FOR JURY**

1 Plaintiffs DAREN HEATHERLY, an individual; and DISABILITY RIGHTS,  
2 ENFORCEMENT, EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California  
3 public benefit corporation (hereinafter sometimes referred to as “DREES”), complain of  
4 defendant WASHOE HOUSE, INC., a California corporation and allege as follows:

5 **INTRODUCTION:**

6 1. This is a civil rights action for discrimination against persons with physical  
7 disabilities, of which class plaintiff DAREN HEATHERLY and the membership of DREES are  
8 members, for failure to remove architectural barriers structural in nature at defendants’  
9 WASHOE HOUSE, a place of public accommodation, thereby discriminatorily denying plaintiffs  
10 and the class of other similarly situated persons with physical disabilities access to, the full and  
11 equal enjoyment of, opportunity to participate in, and benefit from, the goods, facilities, services,  
12 and accommodations thereof. Plaintiffs seek injunctive relief and damages pursuant to the  
13 Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*; California Civil Code §§51,  
14 51.5 and 54, *et seq.*; and California Health & Safety Code §19955, *et seq.*

15 2. Plaintiff DAREN HEATHERLY is a person with physical disabilities who, on or  
16 about October 13, 2007, October 15, 2007 and November 8, 2007, was an invitee, guest, patron,  
17 customer at defendants’ WASHOE HOUSE, in the City of Petaluma, California. At said time  
18 and place, defendants failed to provide proper legal access to the restaurant, which is a “public  
19 accommodation” and/or a “public facility” including, but not limited to signage, parking, path of  
20 travel, entrance, bar and restrooms. The denial of access was in violation of both federal and  
21 California legal requirements, and plaintiff DAREN HEATHERLY suffered violation of his civil  
22 rights to full and equal access, and was embarrassed and humiliated.

23 **JURISDICTION AND VENUE:**

24 3. **Jurisdiction:** This Court has jurisdiction of this action pursuant to 28 U.S.C.  
25 §1331 for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*  
26 pursuant to pendant jurisdiction, attendant and related causes of action, arising from the same  
27 nucleus of operative facts and arising out of the same transactions, are also brought under parallel  
28 California law, whose goals are closely tied with the ADA, including but not limited to violations

1 of California Civil Code §51, *et seq.* and §54, *et seq.*, California Health & Safety Code §19955 *et*  
2 *seq.*, including §19959; Title 24 California Building Standards Code.

3 4. **Venue:** Venue is proper in this court pursuant to 28 U.S.C. §1391(b) and is  
4 founded on the facts that the real property which is the subject of this action is located at/near  
5 2840 Roblar Road, in the City of Petaluma, County of Sonoma, State of California, and that  
6 plaintiffs' causes of action arose in this county.

7 **PARTIES:**

8 5. Plaintiff DAREN HEATHERLY is a "physically handicapped person", a  
9 "physically disabled person", and a "person with physical disabilities" (hereinafter the terms  
10 "physically disabled", "physically handicapped" and "person with physical disabilities" are used  
11 interchangeably, as these words have similar or identical common usage and legal meaning, but  
12 the legislative scheme in Part 5.5 of the Health & Safety Code uses the term "physically  
13 handicapped persons" and the Unruh Civil Rights Act, §§51, 51.5, 54, 54.1 and 55, and other  
14 statutory measures refer to protection of the rights of "physically disabled persons"). Plaintiff  
15 DAREN HEATHERLY is a "person with physical disabilities", as defined by all applicable  
16 California and United States laws. Plaintiff DAREN HEATHERLY is afflicted with Multiple  
17 Sclerosis and a left hip replacement. Plaintiff DAREN HEATHERLY requires the use of a  
18 wheelchair to travel about in public. Consequently, plaintiff DAREN HEATHERLY is a  
19 member of that portion of the public whose rights are protected by the provisions of Health &  
20 Safety Code §19955, *et seq.* (entitled "Access to Public Accommodations by Physically  
21 Handicapped Persons") and the protections of the Unruh Civil Rights Act, Civil Code §§51 and  
22 51.5 the Disabled Persons Act, Civil Code §54, and the Americans with Disabilities Act, 42  
23 U.S.C. §12101, *et seq.*

24 6. Plaintiff DISABILITY RIGHTS, ENFORCEMENT, EDUCATION, SERVICES:  
25 HELPING YOU HELP OTHERS ("DREES") is a nonprofit (501(c)(3)) organization that works  
26 with persons with disabilities to empower them to be independent in American society. DREES  
27 accomplishes its goals and purposes through education on disability issues, enforcement of the  
28 rights of persons with disabilities, and the provision of services to persons with disabilities, the

1 general public, public agencies and the private business sector. DREES brings this action on  
2 behalf of its members, many of whom are persons with physical disabilities and whom have  
3 standing in their right to bring this action.

4 7. That members of DREES, like plaintiff DAREN HEATHERLY, will or have  
5 been guests and invitees at the subject WASHOE HOUSE, and that the interests of plaintiff  
6 DREES in removing architectural barriers at the subject house advance the purposes of DREES  
7 to assure that all public accommodations, including the subject house, are accessible to  
8 independent use by mobility-impaired persons. The relief sought by plaintiff DREES as alleged  
9 herein is purely statutory in nature.

10 8. Defendant WASHOE HOUSE, INC., a California corporation (hereinafter  
11 alternatively collectively referred to as “defendant”) is the owner and operator, lessor and/or  
12 lessees, or agent of the owners, lessors and/or lessees, of the public accommodation known as  
13 WASHOE HOUSE, located at/near 2840 Roblar Road, Petaluma, California, or of the building  
14 and/or buildings which constitute said public accommodation.

15 9. At all times relevant to this complaint, defendant WASHOE HOUSE INC., a  
16 California corporation, own and operate in joint venture the subject WASHOE HOUSE as a  
17 public accommodation. This business is open to the general public and conducts business  
18 therein. The business is a “public accommodation” or “public facility” subject to the  
19 requirements of California Civil Code §§51, 51.5 and 54, *et seq.*, Health and Safety code §19955,  
20 *et seq.*, and the ADA, 42 U.S.C. §12101, *et seq.*

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10. At all times relevant to this complaint, defendant WASHOE HOUSE INC., a California corporation are jointly and severally responsible to identify and remove architectural barriers at the subject WASHOE HOUSE pursuant to Code of Federal Regulations title 28, section 36.201(b), which states in pertinent part:

**§ 36.201 General**

(b) *Landlord and tenant responsibilities.* Both the landlord who owns the building that houses a place of public accommodation and the tenant who owns or operates the place of public accommodation are public accommodations subject to the requirements of this part. As between the parties, allocation of responsibility for complying with the obligations of this part may be determined by lease or other contract.

28 CFR §36.201(b)

**PRELIMINARY FACTUAL ALLEGATIONS:**

11. The WASHOE HOUSE, is a historic style restaurant, located at/near 2840 Roblar Road, California. The WASHOE HOUSE, its signage, parking, path of travel, entrance, bar, restrooms and its other facilities are each a “place of public accommodation or facility” subject to the barrier removal requirements of the Americans with Disabilities Act. On information and belief, each such facility has, since July 1, 1970, undergone “alterations, structural repairs and additions”, each of which has subjected the WASHOE HOUSE and each of its facilities, its signage, parking, path of travel, entrance bar and restrooms to disability access requirements per the Americans with Disabilities Act Accessibility Guidelines (ADAAG), and Title 24 of the California Code of regulations (Title 24).

12. At all times stated herein, plaintiff DAREN HEATHERLY was a member of DREES.

13. At all times referred to herein and continuing to the present time, defendant, and each of them, advertised, publicized and held out the WASHOE HOUSE as being handicapped accessible and handicapped usable.

14. On or about October 13, 2007, October 15, 2007 and November 8, 2007, plaintiff DAREN HEATHERLY was an invitee and guest at the subject WASHOE HOUSE, with his wife, Irma Ramirez, for purposes of having food and beverage.

1           15.     On or about October 13, 2007, plaintiff DAREN HEATHERLY entered the  
2 parking lot with his wife. Plaintiff's wife was driving. They could not find any parking for the  
3 disabled. There wasn't even any parking signage.

4           16.     At said time and place, plaintiff DAREN HEATHERLY and his wife exited from  
5 their van. Neither saw any directional signage indicating a clear path of travel from the parking  
6 lot.

7           17.     At said time and place, plaintiff DAREN HEATHERLY and Irma Ramirez  
8 encountered the entry door which had a high threshold making entry difficult.

9           18.     At said time and place, plaintiff DAREN HEATHERLY wheeled into the  
10 restaurant with his wife. The bar did not have accessible seating.

11           19.     At said time and place, plaintiff DAREN HEATHERLY and his wife were seated  
12 for their meals. Plaintiff DAREN HEATHERLY needed to use a restroom. Any accessible  
13 restroom whether a men's or women's would have been acceptable.

14           20.     At said time and place, plaintiff DAREN HEATHERLY attempted to use the  
15 restroom and during the ordeal of using the water closet, plaintiff suffered trauma to his body.  
16 Plaintiff DAREN HEATHERLY became trapped in the restroom and was forced to cry out for  
17 help, and gain the attention of other patrons. Another man came and extricated plaintiff DAREN  
18 HEATHERLY from the restroom.

19           21.     On or about October 15, 2007, plaintiff DAREN HEATHERLY and his wife  
20 returned to the WASHOE HOUSE. Plaintiff DAREN HEATHERLY encountered all of the  
21 same barriers he had experienced two (2) days before, except for the restroom. Plaintiff DAREN  
22 HEATHERLY knew it would be futile to attempt to use the men's restroom.

23           22.     On or about November 8, 2007, plaintiff DAREN HEATHERLY and Irma  
24 Ramirez returned to the WASHOE HOUSE. They hoped that some access would have been  
25 provided, such as parking. They found that none of the barriers had been removed. Plaintiff  
26 DAREN HEATHERLY encountered all of the same architectural barriers.

1           23.     Therefore, at said time(s) and place, plaintiff DAREN HEATHERLY, a person  
2 with a disability, encountered the following inaccessible elements of the subject WASHOE  
3 HOUSE which constituted architectural barriers and a denial of the proper and legally-required  
4 access to a public accommodation to persons with physical disabilities including, but not limited  
5 to:

- 6           a.     lack of directional signage to show accessible routes of travel, i.e,  
7                 entrances;
- 8           b.     lack of the requisite type and number of disabled parking stall(s);
- 9           c.     lack of the requisite number of regular disabled parking stall(s);
- 10          d.     lack of disabled van accessible parking stall(s);
- 11          e.     lack of (proper) disabled parking signage;
- 12          f.     lack of tow-a-way signage;
- 13          g.     lack of an accessible entrance;
- 14          h.     lack of handicapped accessible bar counter;
- 15          i.     lack of a handicapped-accessible women's public restroom;
- 16          j.     lack of a handicapped-accessible men's public restroom;
- 17          k.     On personal knowledge, information and belief, other public facilities and  
18                 elements too numerous to list were improperly inaccessible for use by  
19                 persons with physical disabilities.

20           24.     At all times stated herein, the existence of architectural barriers at defendants'  
21 place of public accommodation evidenced "actual notice" of defendants' intent not to comply  
22 with the Americans with Disabilities Act of 1990 either then, now or in the future.

23           25.     On or about October 24, 2007, defendant(s) were sent two (2) letters by or on  
24 behalf of plaintiff DAREN HEATHERLY advising of the existence of architectural barriers,  
25 requesting a response within 14 days and requesting remedial measures be undertaken within 90  
26 days or an explanation of why the time limit set could not be met and/or extenuating  
27 circumstances. The letters addressed to 2840 Roblar Road was returned. Plaintiff and his wife  
28 then learned that the letters should have been addressed to the landlord and tenant with the  
address of Stoney Point Road and Roblar. Irma Ramirez re-did the envelope and mailed the



1 letters back in November of 2007. Those letter were not returned. Said letters are attached  
2 hereto collectively as exhibit "A" and incorporated by reference as though fully set forth herein.  
3 Defendants' failure to respond evidenced an intent not to seek or engage in an early and  
4 reasonable resolution of the matter.

5 26. At all times stated herein, defendant, and each of them, did not act as reasonable  
6 and prudent landlord/tenant and were "negligent per se" or at a minimum negligent for not  
7 removing architectural barriers that would foreseeably prevent plaintiff DAREN HEATHERLY  
8 from receiving the same goods and services as able bodied people and some of which may and  
9 did pose a threat of harm and/or personal injury to people with disabilities. Therefore as a legal  
10 result of defendants breach of duty to remove those barriers encountered by plaintiff, plaintiff  
11 suffered bodily injury.

12 27. As a legal result of defendant WASHOE HOUSE INC., a California corporation's  
13 failure to act as a reasonable and prudent public accommodation in identifying, removing or  
14 creating architectural barriers, policies, practices and procedures that denied access to plaintiffs  
15 and other persons with disabilities, plaintiffs suffered the damages as alleged herein.

16 28. As a further legal result of the actions and failure to act of defendant, and as a  
17 legal result of the failure to provide proper handicapped-accessible public facilities as set forth  
18 herein, plaintiffs were denied their civil rights to full and equal access to public facilities.  
19 Plaintiff DAREN HEATHERLY suffered a loss of his civil rights and his rights as a person with  
20 physical disabilities to full and equal access to public facilities, and further suffered bodily injury  
21 on or about October 13, 2007, (including, but not limited to, fatigue, stress, strain and pain in  
22 wheeling and attempting to and/or transferring up, on, down, to, over, around and through  
23 architectural barriers. Specifically, as a legal result of defendants negligence in the design,  
24 construction and maintenance of the existing men's restroom, plaintiff suffered continuous,  
25 repetitive and cumulative trauma to his upper extremities while attempting to extricate himself  
26 from the men's restroom).

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1           29. Further, plaintiff DAREN HEATHERLY suffered emotional distress, mental  
2 distress, mental suffering, mental anguish, which includes, but is not limited to, shame,  
3 humiliation, embarrassment, anger, disappointment and worry, expectedly and naturally  
4 associated with a person with physical disabilities being denied access, all to his damages as  
5 prayed hereinafter in an amount within the jurisdiction of this court. No claim is being made for  
6 mental and emotional distress over and above that usually associated with the discrimination and  
7 physical injuries claimed, and no expert testimony regarding this usual mental and emotional  
8 distress will be presented at trial in support of the claim for damages.

9           30. Defendants', and each of their, failure to remove the architectural barriers  
10 complained of herein created, at the time of plaintiff DAREN HEATHERLY's first visit to said  
11 public accommodation, and continues to create continuous and repeated exposure to substantially  
12 the same general harmful conditions which caused plaintiff DAREN HEATHERLY harm as  
13 stated herein.

14           31. Plaintiff DAREN HEATHERLY and the membership of DREES were denied  
15 their rights to equal access to a public facility by defendant WASHOE HOUSE, INC., a  
16 California corporation because defendant WASHOE HOUSE, INC., a California corporation  
17 maintained a steak house without access for persons with physical disabilities to its facilities,  
18 including but not limited to the signage, parking, path of travel, entrance bar, restrooms and other  
19 public areas as stated herein, and continue to the date of filing this complaint to deny equal  
20 access to plaintiffs and other persons with physical disabilities in these and other ways.

21           32. On information and belief, construction alterations carried out by defendant has  
22 also triggered access requirements under both California law and the Americans with Disabilities  
23 Act of 1990.

24           33. Plaintiffs, as described hereinbelow, seek injunctive relief to require the  
25 WASHOE HOUSE to be made accessible to meet the requirements of both California law and  
26 the Americans with Disabilities Act of 1990, whichever is more restrictive, so long as defendant  
27 operates the house as a public facility.  
28

1           34.     Plaintiffs seek damages for violation of their civil rights on October 13, 2007,  
2     October 15, 2007 and November 8, 2007 and they seek statutory damages of not less than  
3     \$4,000, pursuant to Civil Code §52(a) or alternatively \$1000 pursuant to Civil Code §54.3, for  
4     each day after his visit that the trier of fact (court/jury) determines was the date that some or all  
5     remedial work should have been completed under the standard that he landlord and tenant had an  
6     ongoing duty to identify and remove architectural barriers where it was readily achievable to do  
7     so, which deterred plaintiff DAREN HEATHERLY from returning to the subject public  
8     accommodation because of his knowledge and/or belief that neither some or all architectural  
9     barriers had been removed and that said premises remains inaccessible to persons with  
10    disabilities whether a wheelchair user or otherwise.

11           35.     On information and belief, defendant has been negligent in their affirmative duty  
12    to identify the architectural barriers complained of herein and negligent in the removal of some  
13    or all of said barriers.

14           36.     Because of defendants' violations, plaintiffs and other persons with physical  
15    disabilities are unable to use public facilities such as those owned and operated by defendant on a  
16    "full and equal" basis unless such facility is in compliance with the provisions of the Americans  
17    with Disabilities Act of 1990, Civil Code §54.1 and Health & Safety Code §19955, *et seq.* and  
18    other accessibility law as plead herein. Plaintiffs seek an order from this court compelling  
19    defendant to make the WASHOE HOUSE accessible to persons with disabilities.

20           37.     On information and belief, defendant has intentionally undertaken to modify and  
21    alter existing building(s), and has failed to make them comply with accessibility requirements  
22    under the requirements of ADAAG and Title 24. The acts and omission of the defendant, and  
23    each of them, in failing to provide the required accessible public facilities at the time of  
24    plaintiff's visit and injuries, indicate actual and implied malice toward plaintiffs, and despicable  
25    conduct carried out by defendant, and each of them, with a willful and conscious disregard for  
26    the rights and safety of plaintiffs and other similarly situated persons, and justify a trebling of  
27    damages as provided by Civil Code §§52(a) and 54.3, in order to make a more profound example  
28    of defendants, and each of them, to other operators of other steak houses, speciality restaurants

1 and other public facilities, and to punish defendant and to carry out the purposes of the Civil  
2 Code §§ 51, 51.5 and 54.

3 38. Plaintiffs are informed and believe and therefore allege that defendant WASHOE  
4 HOUSE, INC., a California corporation, and each of them, caused the subject building(s) which  
5 constitute the WASHOE HOUSE to be constructed, altered and maintained in such a manner  
6 that persons with physical disabilities were denied full and equal access to, within and throughout  
7 said building(s) of the house and were denied full and equal use of said public facilities.  
8 Furthermore, on information and belief, defendants have continued to maintain and operate said  
9 house and/or its building(s) in such conditions up to the present time, despite actual and  
10 constructive notice to such defendants that the configuration of the WASHOE HOUSE and/or its  
11 building(s) is in violation of the civil rights of persons with physical disabilities, such as plaintiff  
12 DAREN HEATHERLY, the membership of plaintiff DREES and the disability community  
13 which DREES serves. Such construction, modification, ownership, operation, maintenance and  
14 practices of such public facilities are in violation of Civil Code §§51, 51.5 and 54, Health and  
15 Safety Code §19955, and the ADA, 42 U.S.C. §12101, *et seq.*

16 39. On personal knowledge, information and belief, the basis of defendants' actual  
17 and constructive notice that the physical configuration of the facilities including, but not limited  
18 to, architectural barriers constituting the WASHOE HOUSE and/or building(s) was in violation  
19 of the civil rights of persons with physical disabilities, such as plaintiffs, includes, but is not  
20 limited to, communications with invitees and guests, plaintiff DAREN HEATHERLY himself,  
21 owners of other restaurants, hotels, motels and businesses, notices they obtained from  
22 governmental agencies upon modification, improvement, or substantial repair of the subject  
23 premises and other properties owned by these defendants, newspaper articles and trade  
24 publications regarding the Americans with Disabilities Act of 1990 and other access laws, public  
25 service announcements by former U.S. Attorney General Janet Reno between 1993 and 2000,  
26 and other similar information. Defendants' failure, under state and federal law, to make the  
27 WASHOE HOUSE accessible is further evidence of defendants' conscious disregard for the  
28 rights of plaintiff and other similarly situated persons with disabilities. Despite being informed

1 of such effect on plaintiff and other persons with physical disabilities due to the lack of  
 2 accessible facilities, defendant, and each of them, knowingly and willfully refused to take any  
 3 steps to rectify the situation and to provide full and equal access for plaintiffs and other persons  
 4 with physical disabilities to the house. Said defendant, and each of them, have continued such  
 5 practices, in conscious disregard for the rights of plaintiffs and other persons with physical  
 6 disabilities, up to the date of filing of this complaint, and continuing thereon. Defendant had  
 7 further actual knowledge of the architectural barriers referred to herein by virtue of the demand  
 8 letter addressed to the defendant and served concurrently with the summons and complaint. Said  
 9 conduct, with knowledge of the effect it was and is having on plaintiffs and other persons with  
 10 physical disabilities, constitutes despicable conduct in conscious disregard of the rights and  
 11 safety of plaintiffs and of other similarly situated persons, justifying the imposition of treble  
 12 damages per Civil Code §§52 and 54.3.

13 40. Plaintiff DAREN HEATHERLY and plaintiff DREES, on behalf of its  
 14 membership and the disability community which it serves, consisting of persons with disabilities,  
 15 would, could and will return to the subject public accommodation when it is made accessible to  
 16 persons with disabilities.

17 **I. FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A PUBLIC**  
 18 **ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH**  
 19 **DISABILITIES ACT OF 1990 (42 U.S.C. §12101, *et seq.*)**  
 20 (On behalf of Plaintiffs DAREN HEATHERLY and DISABILITY RIGHTS  
 21 ENFORCEMENT, EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a  
 22 California public benefit corporation and Against Defendant WASHOE HOUSE, INC., a  
 23 California corporation, inclusive)  
 24 (42 U.S.C. §12101, *et seq.*)

25 41. Plaintiffs replead and incorporate by reference, as if fully set forth again herein,  
 26 the allegations contained in paragraphs 1 through 40 of this complaint.

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42. Pursuant to law, in 1990, the United States Congress made findings per 42 U.S.C. §12101 regarding persons with physical disabilities, finding that laws were needed to more fully protect:

some 43 million Americans with one or more physical or mental disabilities; [that] historically society has tended to isolate and segregate individuals with disabilities; [that] such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem; [that] the nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living and economic self-sufficiency for such individuals; [and that] the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous.

43. Congress stated as its purpose in passing the Americans with Disabilities Act of 1990 (42 U.S.C. §12102):

It is the purpose of this act (1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities; (2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities; (3) to ensure that the Federal government plays a central role in enforcing the standards established in this act on behalf of individuals with disabilities; and (4) to invoke the sweep of Congressional authority, including the power to enforce the 14th Amendment and to regulate commerce, in order to address the major areas of discrimination faced day to day by people with disabilities.

44. As part of the Americans with Disabilities Act of 1990, Public Law 101-336 (hereinafter the "ADA"), Congress passed "Title III - Public Accommodations and Services Operated by Private Entities" (Section 301 42 U.S.C. §12181, *et seq.*). Among the public accommodations identified for purposes of this title was:

(7) PUBLIC ACCOMMODATION - The following private entities are considered public accommodations for purposes of this title, if the operations of such entities affect commerce -

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(B) a restaurant, bar or other establishment serving food or drink.

42 U.S.C. §12181(7)(B)

45. Pursuant to §302, 42 U.S.C. §12182, "No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities,

1 privileges, advantages, or accommodations of any place of public accommodation by any person  
 2 who owns, leases, or leases to, or operates a place of public accommodation”.

3 46. The specific prohibitions against discrimination set forth in §302(b)(2)(a),  
 4 42 U.S.C. §12182(b)(2)(a) are:

5 (I) the imposition or application of eligibility criteria  
 6 that screen out or tend to screen out an individual with a disability  
 7 or any class of individuals with disabilities from fully and equally  
 8 enjoying any goods, services, facilities, privileges, advantages, or  
 accommodations, unless such criteria can be shown to be necessary  
 for the provision of the goods, services, facilities, privileges,  
 advantages, or accommodations being offered;

9 (ii) a failure to make reasonable modifications in  
 10 policies, practices, or procedures, when such modifications are  
 11 necessary to afford such goods, services, facilities, privileges,  
 12 advantages or accommodations to individuals with disabilities,  
 unless the entity can demonstrate that making such modifications  
 would fundamentally alter the nature of such goods, services,  
 facilities, privileges, advantages, or accommodations;

13 (iii) a failure to take such steps as may be necessary to  
 14 ensure that no individual with a disability is excluded, denied  
 15 services, segregated or otherwise treated differently than other  
 16 individuals because of the absence of auxiliary aids and services,  
 17 unless the entity can demonstrate that taking such steps would  
 18 fundamentally alter the nature of the good, service, facility,  
 19 privilege, advantage, or accommodation being offered or would  
 result in an undue burden;

20 (iv) a failure to remove architectural barriers, and  
 21 communication barriers that are structural in nature, in existing  
 22 facilities . . . where such removal is readily achievable; and

23 (v) where an entity can demonstrate that the removal of  
 24 a barrier under clause (iv) is not readily achievable, a failure to  
 25 make such goods, services, facilities, privileges, advantages or  
 26 accommodations available through alternative methods if such  
 27 methods are readily achievable.

28 The acts of defendant set forth herein were a violation of plaintiffs’ rights under the ADA, Public  
 Law 101-336, and the regulations promulgated thereunder, 28 CFR Part 36, *et seq.* - Effective  
 January 31, 1993, the standards of the ADA were also incorporated into California Civil Code  
 §51, making available the damage remedies incorporated into Civil Code §51 and 52(a) and 54.3.

47. The removal of the barriers complained of by plaintiffs as hereinabove alleged  
 was at all times after January 26, 1992 “readily achievable” as to the subject building(s) of the

1 WASHOE HOUSE pursuant to 42 U.S.C. §12182 (b)(2)(A)(i)-(iv). On information and belief, if  
2 the removal of all the barriers complained of herein together was not “readily achievable,” the  
3 removal of each individual barrier complained of herein was “readily achievable.” On  
4 information and belief, defendants’ failure to remove said barriers was likewise due to  
5 discriminatory practices, procedures and eligibility criteria, as defined by 42 U.S.C. §12182  
6 (b)(2)(A)(i) and (ii).

7 48. Per 42 U.S.C. §12181 (9), the term “readily achievable” means “easily  
8 accomplishable and able to be carried out without much difficulty or expense.” The statute  
9 defines relative “expense” in part in relation to the total financial resources of the entities  
10 involved. Plaintiffs allege that properly repairing, modifying, or altering each of the items that  
11 plaintiffs complain of herein were and are “readily achievable” by the defendant under the  
12 standards set forth under §301(9) of the Americans with Disabilities Act. Furthermore, if it was  
13 not “readily achievable” for defendant to remove each of such barriers, the defendant has failed  
14 to make the required services available through alternative methods which were readily  
15 achievable.

16 49. On information and belief, construction work on, and modifications of, the subject  
17 building(s) of WASHOE HOUSE occurred after the compliance date for the Americans with  
18 Disabilities Act, January 26, 1992, independently triggering access requirements under Title III  
19 of the ADA.

20 50. Pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C. §12188, *et*  
21 *seq.*, plaintiffs are entitled to the remedies and procedures set forth in §204(a) of the Civil Rights  
22 Act of 1964, 42 U.S.C. 2000(a)-3(a), as plaintiffs are being subjected to discrimination on the  
23 basis of disability in violation of this title or have reasonable grounds for believing that plaintiffs  
24 are about to be subjected to discrimination in violation of §302. Plaintiffs are deterred from  
25 returning to or making use of the public facilities complained of herein so long as the premises  
26 and defendants’ policies bar full and equal use by persons with physical disabilities.

27 51. 42 U.S.C. 12188 (a)(1) states: “Nothing in this section shall require a person with  
28 a disability to engage in a futile gesture if such person has actual notice that a person or



organization covered by this title does not intend to comply with its provisions". Pursuant to this section, plaintiff DAREN HEATHERLY has not returned to defendants' premises since on or about November 8, 2007, but on information and belief, alleges that the defendant has continued to violate the law and deny the rights of plaintiffs and of other persons with physical disabilities to access this public accommodation. Pursuant to 42 USC §12188(a)(2), "In cases of violations of §302(b)(2)(A)(iv) . . . injunctive relief shall include an order to alter facilities to make such facilities readily accessible to and usable by individuals with disabilities to the extent required by this title".

52. Plaintiffs seek relief pursuant to remedies set forth in §204(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000(a)-3(a)), and pursuant to federal regulations adopted to implement the Americans with Disabilities Act of 1990, including but not limited to an order granting injunctive relief and attorneys' fees. Plaintiffs will seek attorneys' fees conditioned upon being deemed to be the prevailing party.

Wherefore, plaintiffs pray for relief and damages as hereinafter stated.

**II. SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1 AND 54.3, ET SEQ.**  
 (On Behalf of Plaintiffs DAREN HEATHERLY and DISABILITY RIGHTS, ENFORCEMENT, EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public benefit corporation, and Against Defendant WASHOE HOUSE, INC., a California corporation, inclusive)  
 (California Civil Code §§54, 54.1, 54.3, *et seq.*)

53. Plaintiffs replead and incorporate by reference as if fully set forth again herein, the allegations contained in paragraphs 1 through 52 of this complaint.

54. At all times relevant to this action, California Civil Code §54 has provided that persons with physical disabilities are not to be discriminated against because of physical handicap or disability. This section provides that:

(a) Individuals with disabilities . . . have the same rights as the general public to full and free use of the streets, highways, sidewalks, walkways, public buildings, medical facilities, including hospitals, clinics, and physicians' offices, and other public places.

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1           55.     California Civil Code §54.1 provides that persons with disabilities shall not be  
2 denied full and equal access to places of public accommodation or facilities:

3                   (a)(1) Individuals with disabilities shall be entitled to full  
4 and equal access, as other members of the general public, to  
5 accommodations, advantages, facilities, medical facilities,  
6 including hospitals, clinics, and physicians' offices, and privileges  
7 of all common carriers, airplanes, motor vehicles, railroad trains,  
8 motorbuses, streetcars, boats, or any other public conveyances or  
9 modes of transportation (whether private, public, franchised,  
10 licensed, contracted, or otherwise provided), telephone facilities,  
11 adoption agencies, private schools, hotels, lodging places, places of  
12 public accommodation, amusement or resort, and other places to  
13 which the general public is invited, subject only to the conditions  
14 and limitations established by law, or state or federal regulation,  
15 and applicable alike to all persons.

16           Civil Code §54.1(a)(1)

17           56.     California Civil Code §54.1 further provides that a violation of the Americans  
18 with Disabilities Act of 1990 constitutes a violation of section 54.1:

19                   (d) A violation of the right of an individual under the  
20 Americans with Disabilities Act of 1990 (Public Law 101-336)  
21 also constitutes a violation of this section, and nothing in this  
22 section shall be construed to limit the access of any person in  
23 violation of that act.

24           Civil Code §54.1(d)

25           57.     Plaintiff DAREN HEATHERLY and the membership of plaintiff DREES are  
26 persons within the meaning of Civil Code §54.1 whose rights have been infringed upon and  
27 violated by the defendant, and each of them, as prescribed by Civil Code §§54 and 54.1. Each  
28 specific architectural barrier which defendant knowingly and willfully fail and refuse to remove  
constitutes a separate act in violation of Civil Code §§54 and 54.1. Plaintiffs have been and  
continue to be denied full and equal access to defendants' WASHOE HOUSE. As a legal result,  
plaintiffs are entitled to seek damages pursuant to a court or jury determination, in accordance  
with California Civil Code §54.3(a) for each day on which they visited or have been deterred

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1 from visiting the house because of their knowledge and belief that the WASHOE HOUSE is  
 2 inaccessible to persons with disabilities. California Civil Code §54.3(a) provides:

3 Any person or persons, firm or corporation, who denies or  
 4 interferes with admittance to or enjoyment of the public facilities  
 5 as specified in Sections 54 and 54.1 or otherwise interferes with  
 6 the rights of an individual with a disability under Sections 54, 54.1  
 7 and 54.2 is liable for each offense for the actual damages and any  
 8 amount as may be determined by a jury, or the court sitting without  
 a jury, up to a maximum of three times the amount of actual  
 damages but in no case less than . . . one thousand dollars (\$1,000)  
 and . . . attorney's fees as may be determined by the court in  
 addition thereto, suffered by any person denied any of the rights  
 provided in Sections 54, 54.1 and 54.2.

9 Civil Code §54.3(a)

10 58. On or about October 13, 2007, October 15, 2007 and November 8, 2007 , plaintiff  
 11 DAREN HEATHERLY suffered violations of Civil Code §§54 and 54.1 in that plaintiff DAREN  
 12 HEATHERLY was denied access to signage, parking, path of travel, entrance, bar and restrooms  
 13 and other public facilities as stated herein at the WASHOE HOUSE and on the basis that  
 14 plaintiff DAREN HEATHERLY was a person with physical disabilities.

15 59. As a result of the denial of equal access to defendants' facilities due to the acts  
 16 and omissions of defendant, and each of them, in owning, operating and maintaining these  
 17 subject public facilities, plaintiffs suffered violations of plaintiffs' civil rights, including but not  
 18 limited to rights under Civil Code §§54, 54.1 and 54.3, and plaintiff DAREN  
 19 HEATHERLY suffered physical discomfort, bodily injury on or about October 13, 2007,  
 20 (including, but not limited to, fatigue, stress, strain and pain in wheeling and attempting to and/or  
 21 transferring up, on, down, to, over, around and through architectural barriers. Specifically, as a  
 22 legal result of defendants negligence in the design, construction and maintenance of the existing  
 23 men's restroom, plaintiff DAREN HEATHERLY suffered continuous, repetitive and cumulative  
 24 trauma to his upper extremities while attempting to extricate himself from the men's restroom).

25 60. Further, plaintiff DAREN HEATHERLY suffered emotional distress, mental  
 26 distress, mental suffering, mental anguish, which includes shame, humiliation, embarrassment,  
 27 frustration, anger, disappointment and worry, all of which are expectedly and naturally associated  
 28 with a denial of access to a person with physical disabilities, all to plaintiff's damages as

1 hereinafter stated. Defendants' actions and omissions to act constituted discrimination against  
2 plaintiff on the sole basis that plaintiffs are persons or an entity that represents persons with  
3 physical disabilities and unable, because of the architectural barriers created and maintained by  
4 the defendant in violation of the subject laws, to use the public facilities hereinabove described  
5 on a full and equal basis as other persons.

6 61. Plaintiffs have been damaged by defendants', and each of their, wrongful conduct  
7 and seeks the relief that is afforded by Civil Code §§54 and 54.1, 54.3 and 55 for violation of  
8 plaintiffs' rights as persons or an entity that represents persons with physical disabilities on or  
9 about October 13, 2007, October 15, 2007 and November 8, 2007, and on a continuing basis  
10 since then, including statutory damages, a trebling of all of actual damages, general and special  
11 damages available pursuant to §54.3 of the Civil Code according to proof.

12 62. As a result of defendants', and each of their, acts and omissions in this regard,  
13 plaintiffs have been required to incur legal expenses and hire attorneys in order to enforce  
14 plaintiffs' rights and enforce the provisions of the law protecting access for persons with physical  
15 disabilities and prohibiting discrimination against persons with physical disabilities. Pursuant to  
16 the provisions of Civil Code §54.3 and §55, plaintiffs therefore will seek recovery in this lawsuit  
17 for all reasonable attorneys' fees and costs incurred if deemed the prevailing party. Additionally,  
18 plaintiffs' lawsuit is intended not only to obtain compensation for damages to plaintiffs, but also  
19 to compel the defendant to make their facilities accessible to all members of the public with  
20 disabilities, justifying public interest attorneys' fees, if deemed the prevailing party, pursuant to  
21 the provisions of §1021.5 of the Code of Civil Procedure.

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Wherefore, plaintiffs pray for relief and damages as hereinafter stated.

**III. THIRD CAUSE OF ACTION FOR DENIAL OF ACCESSIBLE SANITARY FACILITIES IN VIOLATION OF HEALTH & SAFETY CODE §19955, *ET. SEQ.***  
 (On Behalf of Plaintiffs DAREN HEATHERLY and DISABILITY RIGHTS, ENFORCEMENT, EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public benefit corporation and Against Defendant WASHOE HOUSE, INC., a California corporation inclusive)  
 (Health & Safety Code §19955, *et seq.*)

63. Plaintiffs plead and incorporate by reference, as if fully set forth again herein, the allegations contained in paragraphs 1 through 62 of this complaint.

64. Health & Safety Code §19955 provides in pertinent part:

The purpose of this part is to insure that public accommodations or facilities constructed in this state with private funds adhere to the provisions of Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of the Government Code. For the purposes of this part “public accommodation or facilities” means a building, structure, facility, complex, or improved area which is used by the general public and shall include auditoriums, hospitals, theaters, restaurants, hotels, motels, stadiums, and convention centers. When sanitary facilities are made available for the public, clients or employees in such accommodations or facilities, they shall be made available for the handicapped.

65. Health & Safety Code §19956, which appears in the same chapter as §19955, provides in pertinent part, “accommodations constructed in this state shall conform to the provisions of Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of the Government Code . . . .” Health & Safety Code §19956 was operative July 1, 1970, and is applicable to all public accommodations constructed or altered after that date. On information and belief, portions of the WASHOE HOUSE and/or of the building(s) were constructed and/or altered after July 1, 1970, and substantial portions of the house and/or the building(s) had alterations, structural repairs, and/or additions made to such public accommodations after July 1, 1970, thereby requiring said house and/or building to be subject to the requirements of Part 5.5, §19955, *et seq.*, of the Health & Safety Code upon such alteration, structural repairs or additions per Health & Safety Code §19959.

66. Pursuant to the authority delegated by Government Code §4450, *et seq.*, the State Architect promulgated regulations for the enforcement of these provisions. Effective July 1, 1982, Title 24 of the California Building Standards Code adopted the California State Architect’s

1 Regulations and these regulations must be complied with as to any alterations and/or  
2 modifications of the WASHOE HOUSE and/or the building(s) occurring after that date.  
3 Construction changes occurring prior to this date but after July 1, 1970 triggered access  
4 requirements pursuant to the "ASA" requirements, the American Standards Association  
5 Specifications, A117.1-1961. On information and belief, at the time of the construction and  
6 modification of said building, all buildings and facilities covered were required to conform to  
7 each of the standards and specifications described in the American Standards Association  
8 Specifications and/or those contained in Title 24 of the California Building Standards Code.

9 67. Steak Houses such as the WASHOE HOUSE are "public accommodations or  
10 facilities" within the meaning of Health & Safety Code §19955, *et seq.*

11 68. As a result of the actions and failure to act of the defendant, and as a result of the  
12 failure to provide proper and legally handicapped-accessible public facilities, plaintiffs were  
13 denied plaintiffs' rights to full and equal access to public facilities and suffered a loss of  
14 plaintiffs' civil rights and plaintiffs' rights as persons with physical disabilities to full and equal  
15 access to public facilities.

16 69. Attorneys' Fees -- As a result of defendants' acts and omissions in this regard,  
17 plaintiffs have been required to incur legal expenses and hire attorneys in order to enforce  
18 plaintiffs' civil rights and enforce provisions of the law protecting access for the persons with  
19 physical disabilities and prohibiting discrimination against the persons with physical disabilities,  
20 and to take such action both in plaintiffs' own interests and in order to enforce an important right  
21 affecting the public interest. Plaintiffs, therefore, seek in this lawsuit the recovery of all  
22 reasonable attorneys' fees incurred, pursuant to the provisions of the Code of Civil Procedure  
23 §1021.5. Plaintiffs additionally seek attorneys' fees pursuant to Health & Safety Code §19953  
24 and Civil Code §§54.3 and 55 and/or in the alternative, plaintiffs will seek attorneys' fees, costs  
25 and litigation expenses pursuant to §204(a) of the Civil Rights Act of 1964 (42 U.S.C. 200(a)-  
26 3(a)). Plaintiffs will seek attorneys' fees conditioned upon being deemed to be the prevailing  
27 party.

28 ///

1           70.     Plaintiffs seek injunctive relief for an order compelling defendant, and each of  
2 them, to make the subject place of public accommodation readily accessible to and usable by  
3 persons with disabilities.

4           Wherefore, plaintiffs pray for damages and relief as hereinafter stated.

5 **IV.     FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO FULL AND**  
6 **EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES, PRIVILEGES**  
7 **AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL CODE §51, *ET***  
8 ***SEQ.* (THE UNRUH CIVIL RIGHTS ACT)**

9           (On Behalf of Plaintiffs DAREN HEATHERLY and DISABILITY RIGHTS,  
10 ENFORCEMENT, EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a  
11 California public benefit corporation, and Against Defendant WASHOE HOUSE, INC., a  
12 California corporation inclusive)  
13 (Civil Code §51, 51.5)

14           71.     Plaintiffs replead and incorporate by reference, as if fully set forth again herein,  
15 the allegations contained in paragraphs 1 through 70 of this complaint.

16           72.     Defendants' actions and omissions and failure to act as a reasonable and prudent  
17 public accommodation in identifying, removing and/or creating architectural barriers, policies,  
18 practices and/or procedures violates §51 of the Civil Code, the Unruh Civil Rights Act. The  
19 Unruh Act provides:

20                     This section shall be known, and may be cited, as the  
21 Unruh Civil Rights Act.

22                     All persons within the jurisdiction of this state are free and  
23 equal, and no matter what their sex, race, color, religion, ancestry,  
24 national origin, or **disability** are entitled to the full and equal  
25 accommodations, advantages, facilities, privileges, or services in  
26 all business establishments of every kind whatsoever.

27                     This section shall not be construed to confer any right or  
28 privilege on a person that is conditioned or limited by law or that is  
applicable alike to persons of every sex, color, race, religion,  
ancestry, national origin, or **disability**.

                      Nothing in this section shall be construed to require any  
construction, alteration, repair, structural or otherwise, or  
modification of any sort whatsoever, beyond that construction,  
alteration, repair, or modification that is otherwise required by  
other provisions of law, to any new or existing establishment,  
facility, building, improvement, or any other structure . . . nor shall  
anything in this section be construed to augment, restrict, or alter in  
any way the authority of the State Architect to require construction,  
alteration, repair, or modifications that the State Architect  
otherwise possesses pursuant to other . . . laws.



1 A violation of the right of any individual under the  
 2 Americans with Disabilities Act of 1990 (Public Law 101-336)  
 shall also constitute a violation of this section.

3 As the Unruh Act incorporates violations of the Americans with Disabilities Act of 1990, the  
 4 “intent” of the defendant in not complying with barrier removal is not an issue. Hence, the  
 5 failure on the parts of defendant, as reasonable and prudent public accommodations, in acting or  
 6 failing to act to identify and remove barriers can be construed as a “negligent per se” act of  
 7 defendant, and each of them.

8 73. The acts and omissions of defendant stated herein are discriminatory in nature and  
 9 in violation of Civil Code §51.5:

10 No business establishment of any kind whatsoever shall  
 11 discriminate against, boycott or blacklist, refuse to buy from, sell  
 12 to, or trade with any person in this state because of the race, creed,  
 13 religion, color, national origin, sex, or **disability** of the person or of  
 the person’s partners, members, stockholders, directors, officers,  
 managers, superintendents, agents, employees, business associates,  
 suppliers, or customers.

14 As used in this section, “person” includes any person, firm  
 15 association, organization, partnership, business trust, corporation,  
 limited liability company, or company.

16 Nothing in this section shall be construed to require any  
 17 construction, alteration, repair, structural or otherwise, or  
 18 modification of any sort whatsoever, beyond that construction,  
 19 alteration, repair or modification that is otherwise required by other  
 20 provisions of law, to any new or existing establishment, facility,  
 building, improvement, or any other structure . . . nor shall  
 21 anything in this section be construed to augment, restrict or alter in  
 any way the authority of the State Architect to require construction,  
 22 alteration, repair, or modifications that the State Architect  
 23 otherwise possesses pursuant to other laws.

24 74. Defendants’ acts and omissions as specified have denied to plaintiffs full and  
 25 equal accommodations, advantages, facilities, privileges and services in a business establishment,  
 26 on the basis of physical disability, in violation of Civil Code §§51 and 51.5, the Unruh Civil  
 27 Rights Act. Furthermore, pursuant to the 1992 amendment to California Civil Code §51, “A  
 28 violation of the right of any individual under the Americans with Disabilities Act of 1990 (Public  
 Law 101-336) shall also constitute a violation of this section”. Plaintiffs accordingly incorporate

1 the entirety of their above cause of action for violation of the Americans with Disabilities Act at  
 2 §41, *et seq.*, as if repled herein.

3 75. As a legal result of the violation of plaintiff DAREN HEATHERLY's civil rights  
 4 as hereinabove described, plaintiff DAREN HEATHERLY has suffered general damages, bodily  
 5 injury on or about October 13, 2007, (including, but not limited to, fatigue, stress, strain and pain  
 6 in wheeling and attempting to and/or transferring up, on, down, to, over, around and through  
 7 architectural barriers. Specifically, as a legal result of defendant negligence in the design,  
 8 construction and maintenance of the existing men's restroom, plaintiff suffered continuous,  
 9 repetitive and cumulative trauma to his upper extremities while attempting to extricate himself  
 10 from the men's restroom).

11 76. Further, plaintiff DAREN HEATHERLY suffered physical injury, emotional  
 12 distress (all to plaintiff's damage according to proof, and incurred reasonable attorneys' fees and  
 13 costs). Plaintiffs DAREN HEATHERLY and DREES are entitled to the rights and remedies of  
 14 §52(a) of the Civil Code, including trebling of actual damages (defined by §52(h) of the Civil  
 15 Code to mean "special and general damages"), as well as to reasonable attorneys' fees and costs,  
 16 as is allowed by statute, according to proof if deemed to be the prevailing party.

17 **PRAYER:**

18 Plaintiffs pray that this court award damages and provide relief as follows:

19 **I. PRAYER FOR FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A**  
 20 **PUBLIC ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH**  
 21 **DISABILITIES ACT OF 1990 (42 U.S.C. §1 2101, *et seq.*)**  
 22 (On Behalf of Plaintiffs DAREN HEATHERLY and DISABILITY RIGHTS  
 23 ENFORCEMENT, EDUCATION, SERVICES:HELPING YOU HELP OTHERS, a  
 24 California public benefit corporation, and Against Defendant WASHOE HOUSE, INC., a  
 25 California corporation , inclusive)  
 26 (42 U.S.C. §12101, *et seq.*)

27 1. For injunctive relief, compelling defendant WASHOE HOUSE, INC., a California  
 28 corporation, inclusive, to make the WASHOE HOUSE, located at 2840 Roblar Road, Petaluma,  
 California, readily accessible to and usable by individuals with disabilities, per 42 U.S.C §12181,  
*et seq.*, and to make reasonable modifications in policies, practice, eligibility criteria and

procedures so as to afford full access to the goods, services, facilities, privileges, advantages and accommodations being offered.

2. For attorneys' fees, litigation expenses and costs of suit, if plaintiffs are deemed the prevailing party; and

3. For such other and further relief as the court may deem proper.

**II. PRAYER FOR SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1 AND 54.3, ET SEQ.**

(On Behalf of Plaintiffs DAREN HEATHERLY and DISABILITY RIGHTS ENFORCEMENT, EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public benefit corporation, and Against Defendant WASHOE HOUSE, INC., a California corporation, inclusive)  
(California Civil Code §§54, 54.1, 54.3, *et seq.*)

1. For injunctive relief, compelling defendant WASHOE HOUSE, INC., a California corporation, inclusive, to make the WASHOE HOUSE, located at 2840 Roblar Road, Petaluma, California, readily accessible to and usable by individuals with disabilities, per state law.

2. Statutory damages as afforded by Civil Code §54.3 for the date of incident and for each occasion on which plaintiffs were deterred from returning to the subject public accommodation.

3. Attorneys' fees pursuant to Civil Code §54.3 and §55 and Code of Civil Procedure §1021.5, if plaintiffs are deemed the prevailing party;

4. Treble damages pursuant to Civil Code §54.3;

5. For all costs of suit;

6. Prejudgment interest pursuant to Civil Code §3291;

7. Such other and further relief as the court may deem just and proper.

**III. PRAYER FOR SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1 AND 54.3, ET SEQ.**

(On Behalf of Plaintiff DAREN HEATHERLY, and Against Defendant WASHOE HOUSE, INC., a California corporation, inclusive),  
(California Civil Code §§54, 54.1, 54.3, *et seq.*)

1. General and compensatory damages according to proof.

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**IV. PRAYER FOR THIRD CAUSE OF ACTION FOR DENIAL OF ACCESSIBLE  
SANITARY FACILITIES IN VIOLATION OF HEALTH & SAFETY CODE  
§19955, ET. SEQ.**

(On Behalf of Plaintiffs DAREN HEATHERLY and DISABILITY RIGHTS  
ENFORCEMENT, EDUCATION, SERVICES:HELPING YOU HELP OTHERS, a  
California public benefit corporation, and Against Defendant WASHOE HOUSE, INC., a  
California corporation, inclusive)  
(Health & Safety code §19955, *et seq.*)

1. For injunctive relief, compelling defendant WASHOE HOUSE, INC., a California  
corporation, inclusive, to make the WASHOE HOUSE, located at 2840 Roblar Road, Petaluma,  
California, readily accessible to and usable by individuals with disabilities, per state law.

2. For attorneys' fees pursuant to Code of Civil Procedure §1021.5, Civil Code §55,  
and/or, alternatively, Health & Safety Code §19953, if plaintiffs are deemed the prevailing party;

3. For all costs of suit;

4. For prejudgment interest pursuant to Civil Code §3291;

5. Such other and further relief as the court may deem just and proper.

**V. PRAYER FOR FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO  
FULL AND EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES,  
PRIVILEGES AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL  
CODE §51, ET SEQ. (THE UNRUH CIVIL RIGHTS ACT)**

(On Behalf of Plaintiffs DAREN HEATHERLY and DISABILITY RIGHTS  
ENFORCEMENT, EDUCATION, SERVICES:HELPING YOU HELP OTHERS, a  
California public benefit corporation and Against Defendant WASHOE HOUSE, INC., a  
California corporation, inclusive)  
(California Civil Code §§51, 51.5, *et seq.*)

1. All statutory damages as afforded by Civil Code §52(a) for the date of incident  
and for each occasion on which plaintiffs were deterred from returning to the subject public  
accommodation;

2. Attorneys' fees pursuant to Civil Code §52(a), if plaintiffs are deemed the  
prevailing party;

3. Treble damages pursuant to Civil Code §52(a);

4. For all costs of suit;

5. Prejudgment interest pursuant to Civil Code §3291; and

6. Such other and further relief as the court may deem just and proper.

VI. PRAYER FOR FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO  
FULL AND EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES,  
PRIVILEGES AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL  
CODE §51, *ET SEQ.* (THE UNRUH CIVIL RIGHTS ACT)  
(On Behalf of Plaintiff DAREN HEATHERLY, and Against Defendant WASHOE  
HOUSE, INC., a California corporation, inclusive)  
(California Civil Code §§51, 51.5, *et seq.*)

I. General and compensatory damages to plaintiff DAREN HEATHERLY according  
to proof.

Dated: 1/20/08, 2008

THOMAS E. FRANKOVICH  
A PROFESSIONAL LAW CORPORATION

By: 

THOMAS E. FRANKOVICH  
Attorneys for Plaintiffs DAREN HEATHERLY and  
DISABILITY RIGHTS ENFORCEMENT, EDUCATION,  
SERVICES: HELPING YOU HELP OTHERS, a California public  
benefit corporation

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a jury for all claims for which a jury is permitted.

Dated: 1/20/08, 2008

THOMAS E. FRANKOVICH  
A PROFESSIONAL LAW CORPORATION

By: 

THOMAS E. FRANKOVICH  
Attorneys for Plaintiffs DAREN HEATHERLY and  
DISABILITY RIGHTS, ENFORCEMENT, EDUCATION,  
SERVICES: HELPING YOU HELP OTHERS, a California  
public benefit corporation

EXHIBIT A

Irma Ramirez  
734 Morton Way  
Santa Rosa, CA 95404

October 24, 2007

Washoe House Manager  
2840 Roblar Road  
Petaluma, CA 94952

Dear Manager:

Recently my husband and I have been to the Washoe House. It's a great old place. It's neat. It's historic. But it's not accessible. But it's also easy to fix. You see we both use wheelchairs to get around in. So, we need parking for the disabled that is van accessible. That way we don't get blocked out of our van and can easily wheel to the front door. The food's good but the restrooms aren't. The restrooms are too small or crowded with partitions. Seems you could make them bigger by using the hallways to get more space. Maybe you could make one bigger by getting rid of some of the partitions, or move things around. Anyway, we think you could fix it up a bit.

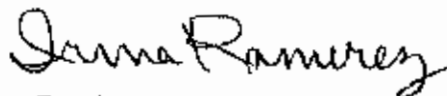
I would really appreciate it if you would give me written assurance within the next two weeks that you will take care of these problems within the next three months. I'd like a written agreement. If you cannot do this, would you forward my letter to whom ever is in charge. I'd like to come back to the Washoe House once it's accessible to me. I may still come back before you do the work just because I like the place if there is some problem doing this please let me know. Would you please reply to my letter by FedEx to make sure I get your response?

I found out who might be able to help you. If you need information on exactly what you need to do, you can contact Pacific ADA and IT Center in Oakland at 1-800-949-4232, or the federal government at 1-800-514-0301. Either of them can send you a copy of the ADA and ADAAG codes, specifications, diagrams and manuals so that you can do the work yourself or have someone do it for you. You could also get a list of barriers common to places like yours and do your own inspection for barriers and remove them.

I was told that, if you make less than a million dollars per year and have a few employees that you can get a \$10,000 tax credit to make your place accessible. That's a great deal. You can get information on this from the two places I mentioned above. You should talk to your accountant about it. Maybe your accountant already has this information or knows about it.

Thank you for considering my request.

Thank You,



Irma Ramirez



Irma Ramirez  
734 Morton Way  
Santa Rosa, CA 95404

October 24, 2007

Owner of the Building for Washoe House  
2840 Roblar Road  
Petaluma, CA 94952

Dear Owner of the building for Washoe House:

Recently my husband and I have been to the Washoe House. It's a great old place. It's neat. It's historic. But it's not accessible. But it's also easy to fix. You see we both use wheelchairs to get around in. So, we need parking for the disabled that is van accessible. That way we don't get blocked out of our van and can easily wheel to the front door. The food's good but the restrooms aren't. The restrooms are too small or crowded with partitions. Seems you could make them bigger by using the hallways to get more space. Maybe you could make one bigger by getting rid of some of the partitions, or move things around. Anyway, we think you could fix it up a bit.

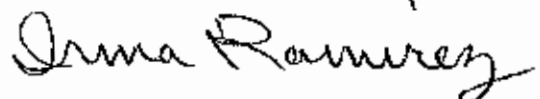
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Irma Ramirez